IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition NO. 96 of 2005 (S/B)

Dated of decision: 18th July, 2005

A.F.R. (Approved for Reporting)

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Not Approved for Reporting

Date Initial of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 96 of 2005 (S/B)

Mrs. Krishna Kumari
W/o Sri Ajay Singh
R/o Village Kurkawala,
Post Office Doiwala,
District Dehradun ……. Petitioner

Versus

1. State of Uttaranchal through
   Principal Secretary,
   Department of Higher Education,
   Dehradun
   .
2. Director of Higher Education,
   Uttaranchal, Haldwani
   District Nainital.
3. Uttaranchal Public Service Commission
   through its Secretary.
4. Principal Secretary,
   Department of Personnel and Appointment,
   Government of Personnel and Appointment,
   Government of Uttaranchal,
   Dehradun. …… Respondents

……..

Mr. Manoj Tiwari, counsel for the petitioners
Mr. K.P. Upadhyaya, Standing Counsel for the State of Uttaranchal.
Mr. B.D. Upadhyaya, Standing Counsel for the respondent no. 3.

Coram: Hon'ble Cyriac Joseph, C.J.
Hon'ble B.C. Kandpal, J.

Cyriac Joseph, C.J. (Oral)

1. The third respondent, Uttaranchal Public Service Commission issued Annexure 4 Notification inviting applications for 200 posts of Lecturers in the Higher Education Department. Out of the 200 posts, 20 are the posts of Lecturer in Chemistry. As per the Notification, out of the 200 posts of Lecturers, 45 are reserved for Scheduled Caste, 1 for Scheduled Tribe and 23 for Other Backward Classes. Remaining 131 posts belong to unreserved category. Out of the 20 posts of Lecturer in Chemistry, 4 are reserved for Scheduled Caste, none for Scheduled Tribe and 3 for Other Backward Classes. The remaining 13 posts belong to

unreserved category. As per clause 6(B) of the Notification, horizontal reservation is made for Women, Dependents of Freedom Fighters of Uttaranchal, Physically Handicapped persons and Ex-servicemen. However, Physically Handicapped persons can be given reservation only as provided in Clause 6 (B), according to which, persons suffering from blindness and locomotor disability can be considered for posts of Lecturers in Hindi, English, Political Science, Sociology, History, Education and Music. Persons suffering from locomotor disability can be considered for the posts of Lecturers in Geography, Economics, Psychology, Home Science, B.Ed., Commerce, Mathematics, Physics, Chemistry, Zoology and Botany.

2. In response to Annexure 4 Notification, the petitioner submitted application for the post of Lecturer in Chemistry (Organic Chemistry branch) as a candidate belonging to Other Backward Class. She also sought the benefit of reservation available to physically handicapped persons. While short-listing the candidates, the petitioner qualified for interview in the Other Backward Classes category and, therefore, the third respondent- Uttaranchal Public Service Commission directed her to submit application form for interview. She submitted the application form for interview and she was interviewed. However, she was not included in the list of selected candidates sent by the third respondent to the first respondent.

3. In such circumstances, the petitioner filed this writ petition praying for a direction to respondent no. 3 to prepare the list of successful candidates for the post of Lecturer in the Department of Higher Education in accordance with the Act No. 1 of 1996 and U.P. Act No. 4 of 1993 which provide the reservation in favour of physically handicapped persons. There is also a prayer for directing respondent no. 3 to include the petitioner’s name in the list of successful candidates for the post of Lecturer in Organic Chemistry.

4. According to the petitioner, 3% reservation is provided for physically handicapped persons, 20% reservation is provided for women and 14 % reservation is provided for Other Backward Classes. It is contended that the petitioner is entitled to the benefit of reservation in all the three categories mentioned above. According to the petitioner, even though there were 200 posts, only 160 candidates were included in the select list. It is stated that as against 20 posts of Lecturers in Chemistry, only 15 candidates were selected. It is further stated that, though three posts of Lecturers in Chemistry were reserved for Other Backward Classes, only two candidates belonging to Other Backward Classes have been included in the select list and one post has been carried forward. According to the petitioner, since she belongs to an Other Backward Class and since she was short-listed and called for interview, there was no justification for carrying forward one post of Lecturer in Chemistry in Other Backward Classes Category. It is contended that she should have been selected in the Other Backward Classes Category against the third post which was carried forward. The petitioner has also got a grievance that though there were 200 posts, only 160 candidates were selected by the third respondent leaving 40 posts unfilled and even then nobody has been given the benefit of reservation for physically handicapped persons. In other words, according to the petitioner, by not reserving 3% of the total posts of 200 for physically handicapped persons, the respondents have violated the statutory provisions contained in Act No. 1 of 1996 and U.P. Act No. 4 of 1993.

5. In the counter affidavit filed by the third respondent, it is admitted that out of the 160 candidates included in the select list, nobody was given the benefit of reservation of physically handicapped persons. The only justification of the third respondent is that, by calculating 3% of the posts in each category, namely, Scheduled Caste, Scheduled Tribe, Other Backward Classes and Unreserved category, it was not possible to reserve even one post of physically handicapped persons in any of those categories. According to the respondents, 3% of posts in any category was

less than one (1) and hence reservation for physically handicapped persons was not possible.

6. In our view, the stand of the respondents in the matter of reservation for physically handicapped persons is not correct. The manner in which the provision for reservation for physically handicapped persons was applied by the third respondent is wrong, illegal and unjust. The consequence of such application of the statutory provision for reservation is total denial of reservation to all the physically handicapped candidates in violation of the statutory provisions. Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full participation) Act, 1995 (Act No. 1 of 1996) is extracted hereunder:

> **"33. Reservation of posts.-** Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons for class of persons with disability of which one per cent each shall be reserved for persons suffering from-
>
> (i) blindness or low vision;
> (ii) hearing impairment;
> (iii) locomotor disability or cerebral palsy
>
> in the posts identified for each disability:
>
> Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

Section 3 of the Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom-Fighters and Ex-Servicemen) Act, 1993 (U.P. Act No. 4 of 1993) also is extracted hereunder:

> **"3. Reservation of vacancies in favour of physically handicapped etc.-** (1) There shall be reserved at the stage of direct recruitment-
>
> (i) in public services and posts two per cent of vacancies for dependents of freedom fighters;

(i-a) in public services and posts other than group 'A' posts or group 'B' posts, on and from May 21, 1999 two per cent of vacancies, and on from the date on which the Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-servicemen) (Amendment) Act, 1999 is published in the Gazette, five per cent of vacancies, for Ex-Servicemen.

(ii) in such public services and posts as the State Government may, by notification, identify one per cent of vacancies each for the persons suffering from,-

(a) blindness or low vision;

(b) hearing impairment; and

(c) locomotor disability or cerebral palsy.

(2) ****(Omitted by U. P. Act No. 6 of 1997)

(3) The persons selected against the vacancies reserved under sub-section (1) shall be placed in the appropriate categories to which they belong, for example, if a selected person belongs to scheduled caste category he will be placed in that quota by making necessary adjustments; if he belongs to Scheduled Tribes Category, he will be placed in the quota by making necessary adjustments; if he belongs to other backward classed of citizens category, he will be placed in that quota by making necessary adjustments. Similarly if he belongs to open competition category, he will be placed in that category by making necessary adjustment.

(4) **** (Omitted by U.P.Act No. 6 of 1997)

(5) Where, due to non-availability of suitable candidates any of the vacancies reserved under sub-section (1) remains unfilled it shall be carried over to the next recruitment."

In our view, the letter and spirit of the above mentioned statutory provisions required that the respondents should have reserved 3% of the total posts for the physically handicapped persons. The learned counsel for the third respondent could not point out any Rule of Government Order or judgment justifying the manner in which provisions of Central Act No. 1 of 1996 and U. P. Act No. 4 of 1993 were applied by the third respondent regarding reservation in favour of physically handicapped persons in the impugned selection.

7. However, the above view taken by us cannot confer any benefit on the petitioner as she could not secure the required minimum marks in the

interview. In compliance with the direction of this Court, the third respondent filed an Additional Counter Affidavit furnishing the necessary details. According to the averments in the Additional Counter Affidavit, 12 candidates belonging to Other Backward Classes category had applied for the post of Lecturers in Chemistry. Out of total 12 other Backward Classes category candidates, only 6 candidates were found eligible to be called for interview after short listing. The petitioner was one of such candidates called for interview. The short listing was done on the basis of a merit list prepared taking into account 20% of the marks in the Intermediate Examination; 30% of the marks in the Graduate Examination and 50% of the marks in the Post-Graduate Examination. The candidates who got the required minimum marks in the aforesaid short-listing process, were called for the interview. The total marks for the interview were fixed as 100. The minimum qualifying marks for General Category Candidates and Other Backward Classes category candidates were fixed as 45. The minimum qualifying marks fixed for Scheduled Caste and Scheduled Tribe were 35. The petitioner could not secure the minimum qualifying marks of 45 in the interview and hence she was not selected. Learned counsel for the petitioner contended that the third respondent could not have fixed the same minimum qualifying marks for Other Backward Classes and General Category candidates. According to learned counsel, the concept of reservation does not permit assessment of merit of the candidates of General Category and Other Backward Classes category by the same standard or criterion. According to learned counsel, in the case of Scheduled Castes and Scheduled Tribes, the minimum qualifying marks fixed by the third respondent were only 35. It is contended that the minimum qualifying marks for the Other Backward Classes candidates should have been less than 45, if not 35 itself. It is unnecessary for us to consider and decide this aspect, in view of the fact that in the interview the petitioner could obtain only less than the minimum marks fixed for the Scheduled Caste and Scheduled Tribe candidates (i.e. 35 marks). Learned counsel for the third respondent placed before us in a sealed cover the marks obtained by the petitioner in the interview. We found that the marks obtained by her are less than 35.

Thus even if the minimum marks fixed for Other Backward Classes candidates were the same as that of Scheduled Caste and Scheduled Tribe candidates, still the petitioner would not qualify for selection. Therefore, even though the application of the provisions for reservation in favour of the physically handicapped persons was defective, no relief can be granted to the petitioner in this writ petition.

8. In the above circumstances, the writ petition is dismissed.

(B.C. Kandpal, J.) 18.07.2005

(Cyriac Joseph, C.J.) 18.07.2005

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